

JS6

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA - SOUTHERN DIVISION**

DINO T.J. SILVA,
Plaintiff,

vs.

JO-ANN STORES, INC.,
Defendant.

Case No. SACV 11-01515 AG (AJWx)
Honorable Andrew J. Guilford,
Courtroom 10-D

~~[PROPOSED] ORDER RE ENTRY
OF JUDGMENT OF
INVOLUNTARY DISMISSAL OF
ACTION WITH PREJUDICE
PURSUANT TO FRCP 41(b)~~

Date Action Filed: August 26, 2011

Trial Date: None Set

**TO PLAINTIFF IN PRO PER AND DEFENDANT AND ITS COUNSEL OF
RECORD:**

BACKGROUND

On August 26, 2011, Plaintiff Dino T.J. Silva ("Plaintiff") filed a complaint against Defendant Jo-Ann Stores, Inc. ("Defendant") for wrongful denial of medical benefits. Plaintiff filed the complaint in the Orange County Superior Court as a small claims matter. On September 29, 2011, Defendant successfully removed the action to this Court based upon the Court's federal question jurisdiction over the

1 ERISA-regulated health care plan from which Plaintiff's claims arose.

2 On October 5, 2011, Defendant filed and served a Notice of Motion and
3 Motion to Dismiss Complaint Pursuant to FRCP Rule 12(b)(6) or, in the
4 Alternative, for a More Definite Statement Pursuant to FRCP 12(e)(the "Motion to
5 Dismiss"). Plaintiff did not file an opposition to the Motion to Dismiss.

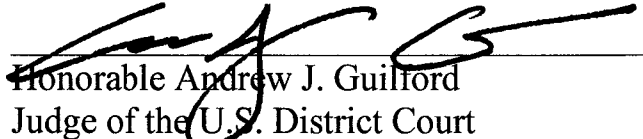
6 On November 10, 2011, the Court issued an Order Granting Defendant's
7 Motion to Dismiss (the "Order"), pursuant to which Plaintiff was given 14 days'
8 leave to file an amended complaint. On November 10, 2011, Defendant filed and
9 served a Notice of Order Granting Defendant's Motion to Dismiss with a copy of
10 the Order attached thereto as an exhibit. In addition, the Court sent a copy of the
11 Order via first class mail to Plaintiff's address of record. Based upon the records in
12 this action, Plaintiff did not file an amended complaint within 14 days of the Order
13 nor seek an extension of the filing deadline from the Court.

14 ORDER

15 **THEREFORE, IT IS HEREBY ORDERED** that the above-entitled action,
16 ~~including~~ ~~and all claims, demands, and causes of action asserted therein are dismissed in their~~
17 ~~entirety with prejudice pursuant to FRCP 41(b)~~

18
19 DATED: DEC 1, 2011

judgment be entered
for the Defendant in

20
21 
22 Honorable Andrew J. Guilford
23 Judge of the U.S. District Court
24
25
26
27
28